IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No.2725 of 2004 (O&M)
Date of Decision : 11.10.2007

Jagrup Singh & Ors. ..... Appellants

Versus

Punjab State Electricity Board & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Sanjiv Gupta, Advocate
for the appellants.

Mr.Rakesh Garg, Advocate
for respondents No. 1 to 3.

Mr. Suvneet Sharma, Advocate
for respondent No.4.

****

VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiffs seeking mandatory injunction directing respondent No.1 to restore connection of 4 BHP in the fields of the plaintiff comprised in Khewat No. 243 Khatoni No. 577 situated at Village Nanhera, Tehsilk Samana District Patiala, has been ordered to be dismissed.

The plaintiffs claimed mandatory injunction against the respondent defendants on the plea that the plaintiff appellants are in peaceful actual and physical cultivating possession of the land in question for the last more than 30 years. It was claimed that the plaintiffs have recently harvested the wheat crops from the land in question. On an application made by the plaintiffs for grant of electric connection and deposit of the amount claimed by the defendants, the electric connection

was given to the plaintiffs. However, in view of the judgment and decree passed in Civil suit No. 459 dated 24.10.1997 the electric connection was disconnected. It was claimed that no reasons were given for its disconnecting the connection of the plaintiffs, which was granted vide letter No. 679 dated 27.4.1998. It was also claimed that plaintiffs were prepared to give any amount, if the same was found due from them for use of electricity.

The suit was contested by defendants No. 1 to 3. It was claimed that the order of disconnection was made in view of the judgment and decree passed by the Civil Judge (Jr. Divn.), Samana vide which decree was passed in favour of the owner of the land restraining the defendants No. 2 and 3 from releasing the electricity connection without their consent. This plea of the defendant respondents was accepted and the suit filed by the plaintiff appellants has been ordered to be dismissed.

The learned counsel for the appellants vehemently contends that vide Ex.P-1 consent was given by the owner of the land for getting connection, therefore, the learned Courts below were not justified in dismissing the suit on the said ground merely on the ground that the fact of issuance of Ex.P-1 was not pleaded in the plaint. Though, it was specifically mentioned in the replication. The contention of the learned counsel for the appellants, therefore, was that the replication is part of pleadings and, therefore, anything said in the pleadings in the replication was to be taken into consideration and, therefore, the Courts below were not justified in dismissing the suit on this ground.

The learned counsel for the appellants also contends that the Courts below were in error in relying upon the judgment and decree earlier

passed by the Civil Court as the suit against them was ordered to be dismissed and, therefore, they were not bound by the said decree. He also contends that even in the said judgment and decree the restraint order was with respect to grant of new connection and not for restoration of the connection already granted.

The learned counsel appearing on behalf of the respondents contends that Ex.P-1 could not be used by the plaintiff appellants firstly for the reason that in spite of existence of Ex.P-1 the suit filed by the owner was decreed in the year 1995 and as the decree was against the defendant respondents they were bound by the said decree unless the same was set aside as the said decree, though, ex parte was binding inter se between the parties.

In reply to the second contention raised by the learned counsel for the appellants, it has been contended by the learned counsel appearing on behalf of the respondents that the application for restoration of the connection was made in the name of the owner and not in the individual name and, therefore, he cannot take any benefit on the ground that he was seeking restoration of the connection already granted.

On consideration, I find no force in the contention raised by the learned counsel for the defendant respondents firstly for the reason that it was not open to the plaintiff appellants to apply for grant of connection in favour of the owner without its consent and furthermore, once there was a decree passed against the respondent defendants restraining them from releasing any connection without the consent of the plaintiff in the previous suit i.e. the owner of the land, it was not open to the plaintiff appellants to seek fresh connection or restoration thereof in the name of the owner, if he

had any individual right then it was for them to apply in his name as per the rules of the Board.

Consequently, there is no merit nor any substantial question of law arises for consideration in this appeal.

Dismissed.

11.10.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**